

UNITED STATES DEPARTMENT OF AGRICULTURE
FOOD SAFETY AND INSPECTION SERVICE
WASHINGTON, DC

FSIS DIRECTIVE

1450.1
REVISION 2

7/9/01

FREEDOM OF INFORMATION AND PRIVACY ACTS

I. PURPOSE

This directive outlines procedures for processing FOIA and PA requests.

II. CANCELLATION

This directive cancels FSIS Directive 1450.1, dated 1/11/85. Previous editions were dated: 3/2/81 (Basic) and 1/11/85 (first revision).

III. REASON FOR REISSUANCE

This revision shows the Director, EMS, as the FOIA Coordinator; updates organizational references; and complies with changes made in the Freedom of Information Act in 1996.

IV. REFERENCES

FSIS Directive 1400.1, Release of Agency Records to External Entities (Proposed)
FSIS Directive 4735.6, Safeguarding Confidential Industry Information
7 CFR 1.18, Fee Schedule
5 U.S.C. 552, Freedom of Information Act
5 U.S.C. 552a, Privacy Act

V. ABBREVIATIONS AND FORMS

The following will appear in their shortened form in this directive:

FOIA	Freedom of Information Act
PA	Privacy Act
EMS	Executive Management Staff

DISTRIBUTION:
All Offices (Except IIC's and Below)

OPI:
OA - Executive Management Staff

VI. **BACKGROUND AND POLICY**

A. FOIA provides any individual access to Federal records or portions of records, **except** records that are protected from disclosure by legal exemptions and exclusions. (**NOTE:** FOIA does not apply to physical objects.) Agencies are not required to create records in response to or answer questions posed as FOIA requests.

B. PA protects individuals against unwarranted invasions of their privacy as a result of Federal agencies' collection, maintenance, use, and disclosure of information about individuals. Under the PA, individuals may seek access to records retrieved by that person's name or another personal identifier, such as social security number or date of birth, unless the records are exempt through PA or FOIA. PA systems of records contain files indexed under names or easily identifiable with individuals, such as personnel files. Under the PA, a person may not obtain copies of records concerning another person without their written permission.

C. FSIS fulfills its obligation to provide information to the public, while preserving the confidentiality of sensitive, personal, and commercial information and the integrity of government decisionmaking information and law enforcement proceedings. Wrongfully disclosed information may cause competitive harm by disclosing proprietary information, result in an unwarranted invasion of personal privacy, or compromise the integrity of government decisionmaking processes. FSIS employees can be held criminally liable for wrongfully disclosing protected commercial or personal information.

VII. **RESPONSIBILITIES**

A. **Director, EMS.** Serves as the FSIS FOIA Coordinator and manages and directs FSIS compliance with public disclosure requirements of the FOIA and PA.

B. **EMS FOIA/PA Office.**

1. Processes FOIA/PA requests received by FSIS and provides guidance on processing FOIA/PA requests.

2. Processes administrative appeals from initial denials of access to FSIS records under the FOIA and PA.

3. Makes determinations on waivers of fees assessed for processing FOIA/PA requests.

4. Prepares the FSIS portion of annual USDA reports to Congress on FOIA and PA activities.

C. **Program and Staff Office FOIA/PA Contacts.** One or more individuals in each program and staff office have been designated as a liaison with EMS on FOIA requests. Contacts assist in gathering records and making recommendations to the FOIA/PA Office on the nature and volume of responsive records, possible ways for narrowing requests, advice on other offices that may have responsive records, and factors to consider in determining whether records should be released.

VIII. **PROCESSING INITIAL REQUESTS**

A. **EMS FOIA/PA Office.**

1. Receives and logs the request.
2. Determines which program office(s) maintains the requested records, based on the FOIA agency contact list.
3. Sends a facsimile copy of the request to the program office(s) that maintains the requested records. Requests the program FOIA/PA contact to gather records responsive to the request and forward them to the FOIA/PA Office, EMS.
4. Reviews the records and processes the request. After receipt in EMS, a FOIA/PA case officer reviews the records to determine if they are responsive to the request and if any information is exempt and should not be disclosed. EMS conceals exempt portions of records or withholds entire records and prepares a response to the requester explaining the exemptions applied.

B. **Other FSIS Offices.**

1. FSIS headquarters or field offices immediately refer FOIA/PA requests for Agency records to the EMS FOIA/PA Office for processing. The office then notifies the requester of the referral and advises the requester that the statutory time limit of 20 working days will begin upon receipt in the FOIA/PA Office.

2. Refer requests to the EMS FOIA/PA Office at:

USDA FSIS
FREEDOM OF INFORMATION ACT OFFICE
EXECUTIVE MANAGEMENT STAFF
ROOM 1140 SOUTH BUILDING
1400 INDEPENDENCE AVENUE SW
WASHINGTON DC 20250
Telephone Number: (202) 720-2109
Facsimile Number: (202) 690-3023

3. Contact the EMS FOIA/PA Office for guidance on uncertainty as to whether requests fall under FOIA/PA.

C. **Time Limits.**

1. **FOIA Requests.** The statutory time limit for response under FOIA is 20 working days. Within that period, the requester may learn whether or not the records will be furnished and the reason (if the records will not be furnished).

a. FOIA provides for an extension of 10 working days if the requested records cannot be provided within the statutory 20-day period.

b. The statutory 20-day period begins when the request arrives at the FOIA/PA Office.

2. **PA Requests.** Receipt of PA requests should be acknowledged within 10 working days after the date of receipt and requested information, if it exists, should be furnished within 30 working days.

IX. **APPEALS**

A. Appeals of FOIA and PA decisions are made to the FSIS Administrator. A Senior FOIA/PA Specialist in EMS processes FOIA and PA appeals.

B. The USDA Office of General Counsel must clear appeals that are denied, in full or in part, by FSIS.

C. The time period for processing FOIA and PA appeals is the same as specified in Subparagraph VIII. C.

X. **FEES**

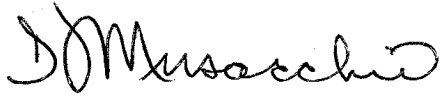
A. **Types of Fees and Fee Categories.** The types of fees that an Agency may charge under FOIA and the level of fees for each requester category are outlined in 7 CFR 1, Appendix A, Subpart A (Fee Schedule). The FOIA/PA office determines fees based on 7 CFR 1, and processes and sends the collected funds to the U.S. Treasury.

B. **Waiver of Fees.** FSIS may waive or reduce fees if disclosure of information in the records is deemed to be in the public interest and is likely to contribute significantly to public understanding of the operations or activities of the government. Such information is not primarily in the commercial interest of the requester. **NOTE:** Fees of \$25 or less will be waived.

C. **Right to Appeal.** Requesters may appeal the denial of a fee waiver request. See Paragraph IX.

XI. **STATISTICAL REPORTS**

The law requires that FSIS provide statistical information concerning the processing of FOIA/PA requests for inclusion in USDA's annual FOIA and PA reports to Congress. The EMS FOIA/PA Office prepares the Agency's submission to the USDA annual reports.

A handwritten signature in black ink, appearing to read "J. Musacchio".

for Deputy Administrator
Office of Management

EXEMPTIONS

I. PRIVACY ACT

Privacy Act systems of records are those which contain files that are indexed under an individual's name or that are readily identifiable with individuals (e.g., personnel files). Material **may** be withheld if it can be established that it is:

- A. Specifically authorized by Executive Order to be kept secret;
- B. Investigatory material compiled for law enforcement purposes (see further criteria to be applied in II. G. below);
- C. Maintained in connection with providing protective services to the President;
- D. Required by statute to be maintained and used solely as statistical records;
- E. Investigatory material compiled solely for the purpose of determining suitability, eligibility, or qualifications for Federal civilian employment, military service, Federal contracts, or access to classified information, but only to the extent that the disclosures would reveal the identity of a source who furnished information under an express promise that the identity of the source would be held in confidence;
- F. Testing or examination material used solely to determine individual qualifications for appointment or promotion in the Federal service; or
- G. Evaluation material used to determine potential promotion in the armed services, but only to protect a confidential source.

II. FREEDOM OF INFORMATION ACT

Material **may** be withheld if it can be established that it is:

- A. Specifically authorized under criteria established by an Executive Order to be kept secret in the interest of national defense or foreign policy and is in fact properly classified pursuant to such Executive Order;
- B. Related solely to the internal personnel rules and practices of the Agency;
- C. Specifically exempted from disclosure by statute;
- D. Trade secret and commercial or financial information obtained from a person and privileged or confidential;

E. Interagency or intra-agency memorandums or letters that would not be available by law to a party other than an agency in litigation with the agency;

F. Personnel and medical files and similar files the disclosure of which would constitute a clearly unwarranted invasion of personal privacy;

G. Investigatory records compiled for law enforcement purposes, but only to the extent that the production of such records would:

1. Interfere with enforcement proceedings;
2. Deprive a person of a right to a fair trial or an impartial adjudication;
3. Constitute an unwarranted invasion of personal privacy;
4. Disclose the identity of a confidential source and, in the case of a record compiled by a criminal law enforcement authority in the course of a criminal investigation, or by an agency conducting a lawful national security intelligence investigation, confidential information furnished only by the confidential source;
5. Disclose investigative techniques and procedures; or
6. Endanger the life or physical safety of law enforcement personnel;

H. Contained in or related to examination, operating, or condition reports prepared by, on behalf of, or for the use of an agency responsible for the regulation or supervision of financial institutions; or

I. Geological and geophysical information and data, including maps, concerning wells.

Records which are technically exempt from release may, in certain instances, be released as a matter of agency discretion if, for example, the public benefit which would result from the release significantly outweighs privacy considerations, or if there would be no substantial actual harm to agency interests as a result of release.